

CLERK US BANKRUPTCY COURT  
DISTRICT OF OREGON

'04 NOV 12 P1:14

LODGED \_\_\_\_\_ REC'D *CR*

PAID \_\_\_\_\_ DOCKETED \_\_\_\_\_

**Albert N. Kennedy**, OSB No. 82142

Direct Dial: (503) 802-2013

Facsimile: (503) 972-3713

E-Mail: al@tonkon.com

**Timothy J. Conway**, OSB No. 85175

Direct Dial: (503) 802-2027

Facsimile: (503) 972-3727

E-Mail: tim@tonkon.com

**Michael W. Fletcher**, OSB No. 01044

Direct Dial: (503) 802-2169

Facsimile: (503) 972-3869

E-Mail: michaelwf@tonkon.com

**TONKON TORP LLP**

1600 Pioneer Tower

888 S.W. Fifth Avenue

Portland, OR 97204

Attorneys for Tort Claimants Committee

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re

ROMAN CATHOLIC ARCHBISHOP  
OF PORTLAND IN OREGON, AND  
SUCCESSORS, A CORPORATION  
SOLE, dba the ARCHDIOCESE OF  
PORTLAND IN OREGON,

Debtor.

Case No. 04-37154-elp11

TORT CLAIMANTS COMMITTEE,

The Committee,

v.

ROMAN CATHOLIC ARCHBISHOP  
OF PORTLAND IN OREGON, AND  
SUCCESSORS, A CORPORATION  
SOLE, dba the ARCHDIOCESE OF  
PORTLAND IN OREGON,

Defendant.

Adv. Proc. No. 04-03292-elp

**TORT CLAIMANTS COMMITTEE'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

ORAL ARGUMENT REQUESTED


1 Pursuant to Bankruptcy Rule 7056 and Federal Rule of Civil Procedure 56,  
2 the Tort Claimants Committee moves for an order granting it partial summary judgment as  
3 follows:

- 4 1. Dismissing Debtor's Third Affirmative Defense (Lack of Subject  
5 Matter Jurisdiction);
- 6 2. Dismissing Debtor's Fifth Affirmative Defense (Religious Freedom);
- 7 3. Dismissing Debtor's Sixth Affirmative Defense (Not Property of the  
8 Estate) as it applies to Debtor's parishes' and schools' interest in the Disputed Real Property  
9 identified in Exhibit 14b to Debtor's Statement of Financial Affairs, as amended; and
- 10 4. Declaring that Debtor's parishes and schools have no legal or  
11 beneficial interest in the Disputed Real Property.

12 This motion is supported by the Tort Claimants Committee's Memorandum in  
13 Support, the Tort Claimants Committee's Concise Statement of Material Facts, the Affidavit  
14 of Albert N. Kennedy, the Affidavit of Malcolm Newkirk and the Affidavit of Patricia L.  
15 Miller.

16 DATED this 12th day of November, 2004.

17 TONKON TORP LLP

18  
19 By   
20 ALBERT N. KENNEDY, OSB No. 82142  
Attorneys for Tort Claimants Committee

21 MARCI A. HAMILTON, *Pro Hac Vice*  
22 36 Timber Knoll Drive  
23 Washington Crossing, PA 18977  
Telephone: (215) 493-1973

24 Special Counsel for Tort Claimants Committee

25 032545\00001\595344 V001  
26

**Albert N. Kennedy**, OSB No. 82142

Direct Dial: (503) 802-2013

Facsimile: (503) 972-3713

E-Mail: al@tonkon.com

**Timothy J. Conway**, OSB No. 85175

Direct Dial: (503) 802-2027

Facsimile: (503) 972-3727

E-Mail: tim@tonkon.com

**Michael W. Fletcher**, OSB No. 01044

Direct Dial: (503) 802-2169

Facsimile: (503) 972-3869

E-Mail: michaelwf@tonkon.com

**TONKON TORP LLP**

1600 Pioneer Tower

888 S.W. Fifth Avenue

Portland, OR 97204

Attorneys for Tort Claimants Committee

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re

ROMAN CATHOLIC ARCHBISHOP  
OF PORTLAND IN OREGON, AND  
SUCCESSORS, A CORPORATION  
SOLE, dba the ARCHDIOCESE OF  
PORTLAND IN OREGON,

Debtor.

TORT CLAIMANTS COMMITTEE,

Plaintiff,

v.

ROMAN CATHOLIC ARCHBISHOP  
OF PORTLAND IN OREGON, AND  
SUCCESSORS, A CORPORATION  
SOLE, dba the ARCHDIOCESE OF  
PORTLAND IN OREGON,

Defendant.

Case No. 04-37154-elp11

Adv. Proc. No. 04-03292-elp

**CERTIFICATE OF SERVICE RE  
TORT CLAIMANTS COMMITTEE'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

CLERK US BANKRUPTCY COURT  
DISTRICT OF OREGON

'04 NOV 12 P1:16

LODGED \_\_\_\_\_ REC'D. *CR*

PAID \_\_\_\_\_ DOCKETED. \_\_\_\_\_

1 I hereby certify that I served copies of the following documents on the parties  
2 listed below:

3 1. Proposed Order Granting Tort Claimants Committee's Motion for  
4 Leave to Submit Overlength Brief and Overlength Concise Statement of Material Facts;

5 2. Tort Claimants Committee's Motion for Partial Summary Judgment;

6 3. Tort Claimants Committee's Memorandum in Support of Motion for  
7 Partial Summary Judgment:

8 4. Tort Claimants Committee's Concise Statement of Material Facts;

9 5. Affidavit of Albert N. Kennedy in Support of Tort Claimants  
10 Committee's Motion for Partial Summary Judgment;

11 6. Affidavit of Malcolm Newkirk in Support of Tort Claimants  
12 Committee's Motion for Partial Summary Judgment; and

13 7. Affidavit of Patricia L. Miller in Support of Tort Claimants  
14 Committee's Motion for Partial Summary Judgment.

15 Howard M. Levine

16 Thomas W. Stilley

17 William N. Stiles

18 Sussman Shank LLP

19 1000 S.W. Broadway, Suite 1400

20 Portland, OR 97205-3089

21 Attorneys for Debtor Roman Catholic Archbishop of Portland in Oregon

22 James M. Finn

23 Schwabe, Williamson & Wyatt, P.C.

24 1600-1900 Pacwest Center

25 1211 S.W. Fifth Avenue

26 Portland, OR 97204-3795

Special Counsel for Debtor

Pamela J. Griffith

U.S. Trustee's Office

620 S.W. Main Street, Room 213

Portland, OR 97205

by causing a copy thereof to be hand-delivered to each party at each party's last-known  
address on the date set forth below; and on

L. Martin Nussbaum

Rothgerber Johnson & Lyons LLP

Wells Fargo Tower, Suite 1100

90 South Cascade Avenue

Colorado Springs, CO 80903


Special Counsel for Debtor

1 by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each  
2 party's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set  
forth below.

3 DATED this 12th day of November, 2004.

4 TONKON TORP LLP

5 By

  
ALBERT N. KENNEDY, OSB No. 82142  
Attorneys for Tort Claimants Committee

6 032545\00001\598853 V001  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26